SS HB 92 -- DEPARTMENT OF NATURAL RESOURCES

This bill changes the laws regarding the Department of Natural Resources.

SOLID WASTE (Sections 29.380 and 260.200 - 260.335, RSMo)

The bill changes the laws regarding solid waste. The bill:

(1) Changes the provisions regarding the audit of solid waste management districts by the State Auditor. Currently, the State Auditor must conduct an audit of each solid waste management district and must thereafter conduct audits of each district as he or she deems necessary and may request reimbursement from the district for the costs of conducting the audit. The bill allows the State Auditor to conduct audits of solid waste management districts as he or she deems necessary and if the State Auditor does request the reimbursement, the district must reimburse the State Auditor for the costs with the moneys deposited into the Petition Audit Revolving Trust Fund. The reimbursement must be limited to 2% of the district's annual monetary allocation;

(2) Revises the independent financial audit requirements. A district receiving more than $800,000 of financial assistance annually must have an annual independent financial statement audit, while districts receiving between $250,000 and $800,000 are required to have an independent financial statement audit every two years. All other districts must be monitored every two years by the department and, based upon the findings in the monitoring report, may be required to arrange for an independent financial statement audit for the monitoring period under review. Currently, a district receiving $200,000 or more of financial assistance annually is required to have an annual independent financial audit while a district receiving less than $200,000 is required to have the audit at least every two years;

(3) Requires the department to conduct a performance audit of grants to each district at least once every five years or as deemed necessary based upon district grantee performance. Currently, the department must conduct a performance audit of grants to each district at least once every three years;

(4) Adds textiles to the products that each solid waste management district is required to address the recycling, reuse, and handling of in its solid waste management plan;

(5) Prohibits the executive board of a solid waste management district from performing solid waste management projects that compete with a qualified private enterprise;

(6) Specifies that a person or entity cannot be disqualified from receiving a grant for providing solid waste management and recycling services on the basis that there exists a familial relationship between the applicant and any member of the solid waste management district executive board within the fourth degree by consanguinity or affinity. For applicants with a familial relationship, the board must only approve the grant application if approved by a vote of two-thirds of the board. If an executive board member does not abstain from a vote to award a grant application to any person or entity who is a relative within the specified degree, he or she must forfeit membership on the solid waste management district executive board and the solid waste management district council;

(7) Requires model waste management plans to provide for economical waste management through regional and district cooperation. Currently, it requires the plan to provide for economical waste management through regional cooperation;

(8) Repeals the provisions requiring any county within a region that is not a member of a district to submit a solid waste management plan to the department;

(9) Extends the moratorium on increasing the sanitary landfill tipping fee, demolition landfill tipping fee, and the transfer station tipping fee from October 1, 2017, to October 1, 2027;

(10) Establishes the criteria that a solid waste management district may consider in establishing the order of district grant priority. Any allocated district moneys remaining in any fiscal year due to inadequate grant applications must be reallocated for grant applications in subsequent years or for solid waste projects other than district operations. Any allocated district moneys remaining after five years must revert to the Solid Waste Management Fund;

(11) Establishes a time line for the department to approve or deny a grant application that has been approved by a solid waste management district;

(12) Changes the provisions regarding the appointing authority, membership, and duties of the Solid Waste Advisory Board, including preparing an annual report by July 1 to each committee and task force of the General Assembly having jurisdiction over solid waste; and

(13) Requires the advisory board to hold regular meetings on a quarterly basis. A special meeting of the board may occur upon a

majority vote of all members at a regular quarterly meeting.

OIL AND GAS PRODUCTION (Sections 259.010 - 259.210)

Currently, the State Oil and Gas Council is composed of eight members with one being from the Division of Geology and Land Survey within the Department of Natural Resources. The bill replaces this member with the State Geologist and removes the requirement that one of the public members on the council be a resident of a third or fourth classification county. The bill removes the division from the advisory committee to the council and replaces it with the department and transfers certain authority from the council to the department.

The definition of "oil" is modified to include hydrocarbons that do not flow to a wellhead but are produced by other means.

The bill creates the Oil and Gas Resources Fund consisting of all gifts, donations, transfers, moneys appropriated by the General Assembly, permit application fees, operating fees, closure fees, late fees, severance fees, and bequests to only be used, after appropriation, to administer the provisions of law relating to oil and gas and to collect, process, manage, interpret, and distribute geologic and hydrologic resource information pertaining to oil and gas potential.

The bill repeals the provision allowing moneys in the Oil and Gas Remedial Fund to be used to pay the expenses incurred by the council.

A permit must be obtained from the State Geologist prior to commencing injection activities for enhanced recovery of oil or gas or for the disposal of fluids.

Currently, the council does not charge a fee for obtaining a permit for drilling operations. The bill allows the Department of Natural Resources to conduct a comprehensive review and propose a new fee structure or propose changes to the oil and gas fee structure that may include permit application fees, operating fees, closure fees, late fees, and an extraction or severance fee. Upon completion of the review, the department must submit a proposed fee structure or changes to the council. If the council approves, by a two-thirds majority vote, the fee structure recommendations, the council must authorize the department to file a notice of proposed rulemaking containing the recommended fee structure that will take effect if it is not disapproved by the General Assembly. The authority to revise the fee structure in this manner will expire on August 28, 2025. If any applicant fails to pay the appropriate fee, a penalty may be assessed and relief may be sought by the department in the

Circuit Court of Cole County or, in the case of well fees, in the circuit court in which the well is located.

Currently, orders regarding spacing units are entered by the State Geologist. The bill requires the department to enter the orders and repeals the exemption for noncommercial gas wells from the provisions regarding spacing units set by the council.

Currently, an applicant seeking a permit for a noncommercial gas well must file a bond or other instrument of credit acceptable to the council. The bill repeals the allowance to file any other instrument of credit.

Currently, the council is required to bring suit against any person appearing to violate or threatening to violate the provisions of law relating to oil and gas or any rule, regulation, or order of the council. The bill allows the department or the council to request the Attorney General to bring the suit.

PERMIT APPEAL PROCEDURES (Sections 260.235, 260.395, 444.600 - 643.078, 644.051, and 644.056)

Currently, when certain permits or licenses are issued, renewed, denied, suspended, or revoked by the Department of Natural Resources, the decision is often appealed to the commission with appropriate jurisdiction, including the Hazardous Waste Management Commission, the Safe Drinking Water Commission, the Air Conservation Commission, the Clean Water Commission, and the Missouri Mining Commission. The bill changes the appeals procedure to require the applicant, or for some permits any aggrieved party, to appeal the decision by filing a petition with the Administrative Hearing Commission within 30 days. The Administrative Hearing Commission may consider certain factors regarding permit decisions for mining as specified in the bill. The Administrative Hearing Commission would then issue a recommended decision to the commission with appropriate jurisdiction. The commission with appropriate jurisdiction must then issue the final decision, and the decision must be subject to judicial review except the Administrative Hearing Commission must issue the final decision for all permits relating to solid waste.

Currently, the department director is required to order an abatement, file an abatement complaint with the Clean Water Commission, or file a complaint to revoke a permit when a violation of the Missouri Clean Water Law has failed to be corrected. The bill changes the revocation process so that the director may not revoke a permit but may request legal action by the Attorney General.

WATERS OF THE STATE (Sections 260.500 and 644.016)

The bill changes the definition of "waters of the state" by specifying that it is all waters within the jurisdiction of this state and removing waters of the United States lying within the state from the definition as it applies to the provisions of law regarding hazardous substance cleanup and the Missouri Clean Water Law.

SULFUR DIOXIDE AIR QUALITY (Section 643.650)

The bill requires any owner of a coal-fired electric generating source in a one-hour sulfur dioxide National Ambient Air Quality Standards nonattainment area currently designated as of April 1, 2015, to develop an ambient air quality monitoring or modeling network to characterize the sulfur dioxide air quality surrounding the source. The network must adequately monitor the sulfur dioxide surrounding the source and must operate for at least 12 consecutive quarters. The owner of the source must notify the Department of Natural Resources of the manner that will be used to characterize the air quality around the source. The location of any monitoring network installed by the owner within a nonattainment area must be approved by the department.

Affected sources in an undesignated area that elects to use monitoring to evaluate air quality must be consulted by the department on the use of existing monitors as well as the location of new monitors in the network. The department must not submit its recommendation to the federal Environmental Protection Agency (EPA) on the manner in which data will be gathered for the designation process that is inconsistent with the elections made by affected sources. If sources have elected to monitor, the department must submit recommendations for the designation process by the date set by a final, effective, and applicable EPA requirement but not prior.

The bill also requires the department to consider all ambient air quality monitoring network data collected by any owner of an electric generating source prior to proposing to the Air Conservation Commission any sulfur dioxide limitation, emission reduction requirement, or other requirement for any electric generating source that has elected to install a monitoring network with specified exceptions.

Nothing in these provisions of the bill can prohibit the department from entering into an agreement with an owner of an electric generating source to limit or reduce sulfur dioxide emissions that is below the source's permitted rate.

MISSOURI CLEAN WATER LAW POLICY STATEMENT (Section 644.011)

The bill modifies the policy statement of the Missouri Clean Water Law by stating that it is the policy of this state to strive to meet the objectives of the Missouri Clean Water Law while maintaining maximum employment and full industrial development of this state. The Clean Water Commission must seek the accomplishment of the objectives through the prevention, abatement, and control of water pollution by all practical and economically feasible methods.

FINDING OF AFFORDABILITY (Section 644.145)

Currently, the Department of Natural Resources is required to perform a finding of affordability when issuing permits under the Missouri Clean Water Law for discharges from specified publicly owned treatment works. The bill also requires that the finding be performed when issuing permits for discharges from water or sewer treatment works.

Currently, the definitions of "affordability" and "finding of affordability" are measured by whether an individual customer or household with an income equal to the lower of the median household income for his or her community or the state can pay a utility or sewer bill without undue hardship or without being required to make unreasonable sacrifices in the individual's or the household's essential lifestyle or spending patterns or undergo hardships in order to make the projected monthly payments for the services. The bill specifies that the measurement must be whether an individual or a household with an income equal to or lower than the median household income for his or her community would be required to make unreasonable sacrifices in the individual's or the household's essential lifestyle or spending patterns or undergo hardships in order to make the projected monthly payments for the services.